

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August 2013

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Evaluation Procedures; Annual Review Process; Qualitative Evidence; Student Evaluation; Salary Enhancement; Discrimination
<u>CASE STYLE:</u>	<u>Gingold v. West Virginia University</u> DOCKET NO. 2008-0337-WVU (8/30/2013)
<u>PRIMARY ISSUES:</u>	Whether Grievant's evaluators exercised their professional judgment in the evaluation of his teaching in an arbitrary and capricious manner.
<u>SUMMARY:</u>	Grievant seeks to have the descriptor for his 2004 annual evaluation changed, that his file be corrected, and that his compensation be adjusted accordingly. Respondent's position is that Grievant was judged on his own merits, and was not the victim of discrimination. Faculty evaluations of teaching, research and service are subjective, and the professional judgement of those at the institution who are charged with such evaluations is entitled to great deference. A Grievant seeking to have his evaluation overturned by the Grievance Board bears a substantial burden. Grievant failed to demonstrate that the ratings on his faculty evaluation were arbitrary and capricious, or the result of discrimination.

KEYWORDS: Arbitrary and Capricious; Tenure and Promotion; Nontraditional Instruction; Terminal Contract

CASE STYLE: Kyber v. West Virginia University
DOCKET NO. 2012-1355-WVU (8/6/2013)

PRIMARY ISSUES: Whether Respondent acted arbitrarily and capriciously when it issued a terminal contract.

SUMMARY: Grievant was employed as an Assistant Professor of Landscape Architecture in the Davis College of Agriculture, Forestry and Consumer Sciences at West Virginia University. Grievant was able to demonstrate by a preponderance of the evidence that the Provost's decision to issue her a terminal contract was an arbitrary and capricious act. Grievant met this burden by proving that her teaching performance was placed at a significant disadvantage by the University's failure to provide her with a studio as had been promised at the beginning of her employment. It is undisputed in this case that the studio came four years later than promised in her appointment letter. The undersigned will not second guess the Provost's decision on promotion and tenure; however, it is ordered that Grievant be reinstated to her former position, with an award of back pay, so that she may be reevaluated for promotion and tenure.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

KEYWORDS: Res Judicata; Same Issue; Same Incident

CASE STYLE: Morris v. Harrison County Board of Education
DOCKET NO. 2012-1460-HarED (8/16/2013)

PRIMARY ISSUES: Whether the doctrine of res judicata precludes the relitigation of this grievance.

SUMMARY: This grievance seeks to relitigate the very same issue recently decided by the undersigned. Grievant was given the opportunity to present evidence on the issue at hand at a level three hearing, and a level three decision was issued on that grievance by the Grievance Board on June 13, 2013, specifically ruling on the issue raised in this grievance, and Grievant did not appeal that decision. This grievance is barred by the doctrine of res judicata.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

<u>KEYWORDS:</u>	Nursing Assignments; Transfer Notice; Notice Requirement; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Moore v. Harrison County Board of Education</u> DOCKET NO. 2012-1414-HarED (8/16/2013)
<u>PRIMARY ISSUES:</u>	Whether the reassignment decision regarding the nurses by Respondent was an arbitrary and capricious act.
<u>SUMMARY:</u>	Grievant alleges that she, as Coordinator of Health Services, should have sole decision making authority regarding the assignment of school nurses in Harrison County. Grievant asserts that the nine school nurses reassigned during the 2012-2013 school year are entitled to notification of a pending transfer on or before March 1 of the year in which the transfer will take place. Grievant lacks standing to grieve the lack of notice of transfer on behalf of her fellow nurses. Grievant's claim lacks merit because school nurses are itinerant employees to whom the notice provisions do not apply. Grievant did not prove by a preponderance of the evidence that Respondent's acted in an arbitrary and capricious fashion concerning the assignments.

<u>KEYWORDS:</u>	Improvement Plan; Unsatisfactory Work Performance; Not Maintaining Clean Work Area; Poor Attendance
<u>CASE STYLE:</u>	<u>Bennett v. Tucker County Board of Education</u> DOCKET NO. 2013-1481-CONS (8/5/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent demonstrated that Grievant did not successfully complete the improvement plan and his performance was unsatisfactory.
<u>SUMMARY:</u>	Grievant was terminated from his employment as a Custodian for unsatisfactory performance, after he did not successfully complete an improvement plan. Grievant challenged the imposition of the improvement plan and his subsequent termination. Grievant did not demonstrate that his performance was such that he should not have been placed on an improvement plan. Respondent demonstrated that Grievant had failed to improve his performance at the conclusion of the improvement period, and that, in addition to the fact that he was unable to complete his assigned tasks, the quality of his work was not acceptable.

<u>KEYWORDS:</u>	Default; Time Lines; Extension; Waiver
<u>CASE STYLE:</u>	<u>Walker v. Kanawha County Board of Education</u> DOCKET NO. 2013-0202-KanEDDEF (8/19/2013)
<u>PRIMARY ISSUES:</u>	Whether a default has occurred, and, if so, whether Respondent has a statutory excuse for not responding within the statutory time frame.
<u>SUMMARY:</u>	Grievant argues that a default occurred at level one of the grievance process because the level one decision was not issued within fifteen days after the conclusion of the hearing as required by statute. Respondent denies the same, arguing that the parties agreed to an extension of the statutory time lines for the issuance of the level one decision. Grievant denies entering into any such agreement. Grievant proved by a preponderance of the evidence that a default occurred at level one.
<u>KEYWORDS:</u>	Seniority; Summer School; Service Personnel Positions; Certification; Selection; Relevant Classification; Arbitrary and Capricious; Multi-Classified
<u>CASE STYLE:</u>	<u>Bowyer v. Fayette County Board of Education</u> DOCKET NO. 2012-1352-FayED (8/22/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent's decision to make that seniority as an Aide the deciding factor in filling multi-classified positions was reasonable, and not arbitrary and capricious.
<u>SUMMARY:</u>	Grievant was the unsuccessful applicant for two positions as summer Aide/Autism Mentor. She argued that she had more seniority than the successful applicants as an Autism Mentor, and that one of the applicants was not certified to be an Autism Mentor at the time she was selected for the position. The Board decided that seniority as a Supervisory Aide was the primary factor for selecting these positions and that decision was not arbitrary or capricious. Further, the successful applicant was certified as an Autism Mentor at the time she began work in the summer position.

KEYWORDS: Willful Neglect of Duty; Insubordination; Failure to Report; Unapproved Personal Leave; Job Abandonment

CASE STYLE: Cornell v. Brooke County Board of Education
DOCKET NO. 2013-1289-BroED (8/15/2013)

PRIMARY ISSUES: Whether Respondent demonstrated that Grievant's actions constituted willful neglect of duty and insubordination, and whether the punishment imposed was clearly disproportionate to the offense.

SUMMARY: Grievant was terminated from her employment as a Custodian after she failed to report to work from December 18, 2012, through January 16, 2013, did not call to report off work, and the absences were unpaid and unapproved. Grievant also attempted to report to work on one of these days with her grandchild in tow, after she had specifically been told by the Superintendent that she could not bring her grandchild to work with her. Respondent demonstrated that Grievant abandoned her job, constituting willful neglect of duty, and that her actions further constituted insubordination. Grievant did not demonstrate that the punishment imposed was clearly disproportionate to the offense.

<u>KEYWORDS:</u>	Suspension; Termination; Insubordination; Alcohol; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Woods v. Nicholas County Board of Education</u> DOCKET NO. 2013-0600-CONS (8/15/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent met its burden of proving the charges against Grievant, and whether Respondent's decision to terminate Grievant was arbitrary and capricious.
<u>SUMMARY:</u>	<p>Grievant reported to work and began performing his duties as a Mechanic Foreman, which required him to drive a van owned by Respondent. At the second bus garage he visited that morning, Grievant had a conversation with another employee during which that employee detected the smell of beer on Grievant's breath. Thereafter, Grievant left the bus garage to drive to the central office. The employee told another employee about smelling beer on Grievant, and that employee sent a text message to the Director of Transportation saying that Grievant had been drinking and was driving the county van. The Superintendent instructed the Director of Transportation to make a report to the police. Grievant was eventually stopped by the city police and administered a breathalyzer. The results of the breathalyzer indicated that Grievant had a blood alcohol level of 0.079, which is more than is required for a public intoxication charge, but less than that required for a DUI charge. Grievant was not arrested or issued any citation, but the police officer would not let him drive the van after the traffic stop. Grievant denied consuming alcohol that morning, but admitted to drinking beer the night before. Respondent suspended Grievant, and later terminated his contract for violating the Drug-Free Workplace Policy, citing insubordination. Grievant denies all of Respondent's allegations. Respondent met its burden of proving by a preponderance of the evidence that Grievant violated the Drug-Free Workplace Policy.</p>

<u>KEYWORDS:</u>	Classification; Reduction-in-Force; Seniority; Expertise in Repair or Maintenance Area
<u>CASE STYLE:</u>	<u>Myers v. Monongalia County Board of Education</u> DOCKET NO. 2012-0981-MonED (8/14/2013)
<u>PRIMARY ISSUES:</u>	Whether the person in the classification of Foreman must have expertise in the particular area of repair or maintenance for purposes of a reduction in force.
<u>SUMMARY:</u>	Grievant asserted that he should not have been reduced in force as a Foreman, because an employee less senior than he held that classification title, and she should have been reduced in force, not him. Grievant is also classified as an Electrician 2, and was Foreman over the other Electricians. The less senior employee classified as a Foreman was also classified as a Custodian, and was Custodian Foreman over the 95 Custodians in the County, performing duties completely different from those performed by Grievant. The statutory definition of Foreman recognizes that the person in this position will be skilled in the particular area of repair or maintenance over which the employee exercises supervisory authority. Grievant did not demonstrate that he should not have been reduced in force in the Foreman classification.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Time Lines; Ten-Day Statutory Time Limit; Late Filing
<u>CASE STYLE:</u>	<u>Foster, et al. v. Division of Highways and Division of Personnel</u> DOCKET NO. 05-DOH-336 (8/27/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved that Grievants did not filed within the ten-day statutory time limit.
<u>SUMMARY:</u>	The record of this matter demonstrates that Grievants that failed to file their grievance prior to July 18, 2005, are untimely. Grievants in the Minnick group filed their grievances prior to July 18, 2005, and are therefore timely. Accordingly, all of the above-styled grievances, except for Docket No. 05-DOH-336(K), are dismissed.

<u>KEYWORDS:</u>	Medical Leave of Absence; Personal Leave of Absence; Medical Treatment; Job Abandonment; Failure to Respond; Disability Discrimination
<u>CASE STYLE:</u>	<u>Robinson v. Department of Health and Human Resources/Bureau for Children and Families</u> DOCKET NO. 2013-1533-DHHR (8/26/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent established a valid basis for terminating Grievant's employment.
<u>SUMMARY:</u>	Grievant was terminated from her employment by Respondent on the basis of job abandonment when she did not return to work following an extended Medical Leave of Absence, followed by a shorter Personal Leave of Absence. Based upon multiple anomalies in the administration of the disciplinary process, it was determined that DHHR committed harmful procedural error when it terminated Grievant for "job abandonment" without first providing notice that her termination was being contemplated on those grounds, failing to conduct any investigation to determine whether Grievant received the February 7 notice of proposed termination, and failing to reconsider that decision after receiving an update on her medical condition from her Care Manager prior to the effective date of her termination. DHHR further failed to establish by a preponderance of the evidence that Grievant engaged in "job abandonment" as that term is defined by the Division of Personnel. The appropriate remedy for this violation is to reinstate Grievant to her status at the time of her termination, without back pay. DHHR may then reinitiate the termination process if, by that time, Grievant has not been medically cleared to return to work, and resume her essential duties.

KEYWORDS: Functional Demotion; Reassignment; Reclassification; Discrimination; Performance Requirements

CASE STYLE: Morris v. Workforce West Virginia
DOCKET NO. 2012-0943-CONS (8/20/2013)

PRIMARY ISSUES: Whether Grievant was functionally demoted, discriminated against, or that Respondent's actions were arbitrary and capricious.

SUMMARY: Grievant alleges she was functionally demoted and discriminated against when Respondent reassigned her management responsibility from two units to one and changed her office location. Grievant asserts these decisions were arbitrary and capricious. Grievant did not prove she was functionally demoted or discriminated against. Respondent's decisions were not arbitrary and capricious as they violated no law, rule, or policy and were reasonable in light of the circumstances. Accordingly, the grievance is denied.

KEYWORDS: Dismissal; Moot; Advisory Opinion

CASE STYLE: Stump, Jr. v. Division of Veteran's Affairs
DOCKET NO. 2011-0157-CONS (8/30/2013)

PRIMARY ISSUES: Whether Grievant no longer being employed by Respondent renders the grievance moot.

SUMMARY: The issues raised in this grievance are moot because Grievant is no longer an employee of Respondent. Under these circumstances, there is no additional relief that can be granted. Accordingly, this grievance is dismissed.

KEYWORDS: Dismissal; Moot; Resignation

CASE STYLE: Wilkins v. Department of Environmental Protection/Division of Water and Waste Management
DOCKET NO. 2011-1793-DEP (8/22/2013)

PRIMARY ISSUES: Whether Grievant's resignation from her employment has rendered the issues raised in her grievance moot.

SUMMARY: Grievant filed this grievance contesting a reprimand she had received. Grievant resigned her position with Respondent effective August 1, 2013, while this matter was pending at level three of the grievance process. Grievant's resignation from her employment with Respondent rendered her grievance moot.

KEYWORDS: Travel Expense Report; Travel Policy; Pre-Approved Expenses; Supplemental Travel Authorization; Unauthorized Travel; Change in Travel Plans; Supervisor Approval

CASE STYLE: Heflin v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2012-0686-DHHR (8/8/2013)

PRIMARY ISSUES: Whether Grievant was entitled to reimbursement for her hotel and meal expenses when she did not obtain supervisor approval to stay overnight when attending two days of training.

SUMMARY: Grievant obtained approval to attend a training session in Morgantown, and her travel expenses and projected overtime were pre-approved to drive to Morgantown from Weston and back both days. At the end of the first day of training it was snowing. Grievant compared the cost of staying overnight at a hotel and meal expenses to the pre-approved expenses and overtime cost, and since the cost to stay over was less than the total pre-approved cost to return to Weston and drive back the next day, she decided to stay overnight. She did not call her supervisor to obtain approval for this change because it was after work hours, and she did not know she needed to do so. Grievant was advised that her travel expenses were being denied because she had not obtained pre-approval to stay overnight. Respondent has no policy in place that requires an employee to call her supervisor to obtain approval to stay overnight. Respondent does have in place a policy that requires submission of a supplemental travel authorization form if expenses exceed the pre-approved travel expenses by 10%, which was the case here. No one told Grievant that such a form was needed. Grievant demonstrated that she incurred valid travel expenses on behalf of her employer which should have been paid.

KEYWORDS: Reallocation; Classification; Class Specification; Misclassification; Job Duties; Nature of Work; Properly Classifying Positions

CASE STYLE: Wilkins v. Department of Environmental Protection/Division of Water and Waste Management and Division of Personnel
DOCKET NO. 2011-1333-DEP (8/2/2013)

PRIMARY ISSUES: Whether Grievant prove by a preponderance of the evidence that the ERA classification is the best fit for her position.

SUMMARY: Grievant is employed by DEP as an Environmental Resources Specialist 3 as the Coordinator of a small program. Grievant seeks for her position to be classified as an Environmental Resource Analyst. DEP asserts that the position is properly classified. DOP's interpretation of the critical distinction between the two class specifications is not clearly wrong as it is supported by substantial evidence. While some tasks Grievant performs may fit specific statements within the sought class specification, the class specifications must be read as a whole, and Grievant's duties do not fit that class specification as a whole. Grievant failed to prove by a preponderance of the evidence that the sought classification is the best fit for the position she occupies.

KEYWORDS: Leave of Absence Without Pay; Medical Leave of Absence; Failure to Report to Work; Deception; Altered Return to Work Slip

CASE STYLE: Payne v. Finance Division
DOCKET NO. 2013-0968-DOA (8/15/2013)

PRIMARY ISSUES: Whether the penalty levied was clearly excessive or reflects an abuse of Respondent's discretion.

SUMMARY: Grievant was terminated from her position in Respondent's finance division after submitting a falsified physician's statement. Grievant acknowledges the alteration of the form submitted. Grievant altered the form to extend her time off from work. Grievant is seeking reinstatement into her position and back pay. Grievant contends the penalty imposed by Respondent is too severe, alleging her conduct is simple misconduct, and does not warrant dismissal. Respondent has substantial discretion to determine the penalty in these types of situations. In accordance with applicable standard, Respondent established 'good cause' for termination of Grievant's employment by a preponderance of the evidence.

KEYWORDS: Performance Improvement Plan; Misconduct; Retaliation; Prohibited Conduct

CASE STYLE: Williams v. Division of Natural Resources
DOCKET NO. 2013-1980-DOC (8/19/2013)

PRIMARY ISSUES: Whether Respondent established that Grievant engaged in misconduct of a substantial nature directly affecting the rights and interests of the public.

SUMMARY: Shortly after Grievant completed his probationary period as the Maintenance Supervisor at Hawks Nest State Park, and received an above average employee evaluation, he was placed on a Performance Improvement Plan. About two weeks later, Grievant had a conversation with the park's Assistant Superintendent. In the course of that conversation, Grievant stated that the Park Superintendent "had better back off" the improvement plan or he would make statements regarding litigation filed by a former park employee which would be personally detrimental to the Superintendent. The Assistant Superintendent believed that Grievant was making a threat, and reported the conversation to the Superintendent, who relayed the report to his supervisors. Grievant's employment was terminated for making a threat in order to subvert the improvement plan. Grievant denied under oath that he said anything during his conversations with the Assistant Superintendent resembled the comments alleged. Based solely upon witness credibility, Respondent established that Grievant engaged in the conversation as alleged. However, it was not demonstrated that Grievant's statements constituted a serious threat of harm or wrongdoing, and it appears that the employer's reaction to these statements was inappropriate and grossly excessive.

KEYWORDS: Voluntary Resignation; Advisory Opinions; Relief; Moot

CASE STYLE: Porter v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2012-1165-DHHR (8/19/2013)

PRIMARY ISSUES: Whether the grievance was rendered moot by Grievant's resignation.

SUMMARY: Grievant filed this action on April 20, 2013, requesting the additional job duties assigned to her be posted and filled by another employee. Grievant voluntarily resigned her position with the DHHR effective April 30, 2013, while this matter was pending at level III of the grievance process. Following Grievance resignation, any relief that she may have received from the Grievance Board had she not resigned, and had she prevailed before the grievance board, is now purely speculative, rendering the grievance moot.

KEYWORDS: Classification; Temporary Upgrade; Voluntarily Resigned

CASE STYLE: Beckett v. Department of Health and Human Resources/Bureau for Children and Families and Division of Personnel FAMILIES AND
DOCKET NO. 2013-0078-DHHR (8/20/2013)

PRIMARY ISSUES: Whether Grievant's resignation from employment renders the grievance moot.

SUMMARY: Grievant filed this action requesting a temporary upgrade of her classification on July 23, 2012. Grievant voluntarily resigned her position with the DHHR effective May 31, 2013, while this matter was pending at level III of the grievance process. Following Grievance resignation, any relief that she may have received from the Grievance Board had she not resigned, and had she prevailed before the grievance board, is now purely speculative, rendering the grievance moot.

KEYWORDS: Higher Rate of Pay; Classification; Minimum Salary; Administrative Rule; Incumbent Employees; Starting Salary

CASE STYLE: Clay, et. al. v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital
DOCKET NO. 2012-0293-CONS (8/21/2013)

PRIMARY ISSUES: Whether Respondent acted arbitrarily and capriciously in hiring a new employee at a higher salary than incumbent employees.

SUMMARY: Respondent hired a new employee at a higher salary than Grievants, incumbent employees in the same classification. The new employee's salary was determined properly under the administrative rule. Employees performing similar work need not receive identical pay, so long as they are paid in accordance with the pay scale for their proper employment classification. Grievants cited no law, rule, or policy that would require Respondent to hire a new employee at the same or less pay than incumbent employees or that would require Respondent to increase the pay of incumbent employees if hiring a new employee at a higher rate. Grievants' failed to prove Respondent's actions were arbitrary and capricious.

<u>KEYWORDS:</u>	Verbal Warning; Extended Breaks; Neglect; Insubordination; Threatening Statements; Misconduct; Hostile Workplace Harassment; Failure to Comply; Suspected Abuse
<u>CASE STYLE:</u>	<u>Roe v. Department of Health and Human Resources/Lakin Hospital</u> DOCKET NO. 2012-0653-DHHR (8/21/2013)
<u>PRIMARY ISSUES:</u>	Whether dismissal is disproportionate to the misconduct with which Grievant is charged.
<u>SUMMARY:</u>	Respondent terminated Grievant's employment for insubordination, making threats in violation of the Department of Personnel's Hostile Workplace Policy, and failing to immediately report suspected abuse of a resident at the hospital. Respondent failed to prove violation of the Department of Personnel's policy, but proved the other charges. This grievance is GRANTED in part and DENIED in part.
<u>KEYWORDS:</u>	Employee Performance Appraisal Policy; Performance Rating Period; Performance Evaluation, EPA
<u>CASE STYLE:</u>	<u>Ratcliff v. Department of Environmental Protection</u> DOCKET NO. 2011-1787-DEP (8/27/2013)
<u>PRIMARY ISSUES:</u>	Whether Respondent's failure to follow the Division of Personnel's Employee Performance Appraisal policy invalidated Grievant's EPA-3.
<u>SUMMARY:</u>	Grievant received an Employee Performance Appraisal 3 Form ("EPA-3") at the end of the 2010 performance period. Grievant received an overall rating of "Meets Expectations" for the rating period. However, he also received a rating of "Needs Improvement" in some individual rating areas. Grievant argues that Respondent did not comply with the Division of Personnel's ("DOP") policy related to Employee Performance Appraisals. Grievant also argued that the "Needs Improvement" ratings were inaccurate and not supported by his performance. Grievant proved that his supervisor's failure to set measurable goals at the beginning of the rating period, conduct a proper mid-term evaluation, or otherwise document the rendered ratings, resulted in ratings that were not rendered in accordance with the specific procedures required by the Division of Personnel Policy DOP-17 governing the employee performance appraisal process. The grievance is GRANTED.

KEYWORDS: Drug and Alcohol Free Workplace Policy; Marijuana; Witness Credibility; Hearsay

CASE STYLE: Johnson v. Division of Highways
DOCKET NO. 2013-1095-CONS (8/29/2013)

PRIMARY ISSUES: Whether Grievant violated applicable State Drug and Alcohol Free Policy and/or DOT's policies regarding Standards of Work Performance and Conduct and Drug-Free Workplace.

SUMMARY: Respondent suspended and ultimately terminated Grievant's employment for alleged violation of the State's Drug and Alcohol Free Policy in addition to DOT's policies regarding Standards of Work Performance and Conduct and Drug-Free Workplace. Respondent's disciplinary actions were based upon allegation and its faulty determination that Grievant ingested and was under the influence of marijuana at the workplace. Grievant protests. Without reliable affirming facts/proof, mere contested allegation is insufficient to justify the disciplinary action taken in the circumstance of this matter. Respondent did not adequately substantiate the allegation of wrongdoing and/or prove the forbidden conduct by a preponderance of the evidence. The termination of Grievant's employment was unlawful and not supported by reliable evidence. This grievance is GRANTED.

KEYWORDS: Pay Plan Implementation Policy; Internal Equity Pay Increase; Advisory Opinion; No Relief; Moot; Enforce Settlement

CASE STYLE: Frantz v. Department of Environmental Protection
DOCKET NO. 2012-1296-DEP (8/15/2013)

PRIMARY ISSUES: Whether the relief sought by Grievant, to enforce a settlement agreement, is available from the Grievance Board.

SUMMARY: Grievant seeks to have the Public Employees Grievance Board enforce a settlement agreement between the Respondent and himself. This relief is not available as a matter of law through the grievance procedure.

KEYWORDS: Office Etiquette; Inappropriate Comments; Misconduct; Extremely Inappropriate Statement; Professional Conduct

CASE STYLE: Doran v. Department of Veterans Assistance
DOCKET NO. 2013-0076-DVA (8/2/2013)

PRIMARY ISSUES: Whether Respondent complied with Grievant's pretermination due process rights and whether termination was justified.

SUMMARY: Respondent dismissed Grievant for making unprofessional and inappropriate comments to a client of the agency. This was not the first instance of inappropriate behavior. Grievant argues that respondent denied him due process and failed to prove the incident occurred. Respondent proved by a preponderance of the evidence that the dismissal was justified.